

**STATE OF MICHIGAN
IN THE SUPREME COURT**

SHANNON BITTERMAN,
Plaintiff/Appellant,

v.

Supreme Court Case No.: 151520
Court of Appeals Case No.: 319663
Lower Court Case No.: 13-019397-CZ-2

CHERYL BOLF,
Defendant/Appellee

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**SUPPLEMENTAL BRIEF ON
APPLICATION FOR LEAVE TO APPEAL
TO THE MICHIGAN SUPREME COURT**

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**STATEMENT OF QUESTION PRESENTED
BY ORDER OF THE SUPREME COURT**

- I. How should this Court defined the term “public official” under Section 13(1) of the *Open Meetings Act*, MCL 15.273(1)?

Appellant says: This Court is requested to apply an ordinary dictionary definition and define a public official as “*one who holds or is invested with a public office; a person elected or appointed to carry out some portion of a government’s sovereign powers.*”

SUPPLEMENTAL ARGUMENT

The Michigan Legislature enacted Section 13(1) of the *Open Meetings Act*, MCL 15.273(1), to read as follows:

A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than \$500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

Michigan law has well-defined rules of statutory interpretation, which the Legislature is presumed to know when drafting its statutes. See *Reed v Breton*, 475 Mich 531, 550; 718 NW2d 770 (2006) (“The Legislature is presumed to know the law.”). This Court “is to discern and give effect to the Legislature’s intent.” *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 196; 694 NW2d 544 (2005). Because the Legislature is presumed to understand the meaning of the language it enacts into law, statutory analysis must begin with the wording of the statute itself. *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). The words of a statute provide the most reliable evidence of its intent. *Klooster v City of Charlevoix*, 488 Mich 289, 296; 795 NW2d 578 (2011)(quoting *United States v Turkette*, 452 US 576, 593 (1981)). Both the Michigan Legislature and this Court have instructed that an undefined statutory phrase must be accorded its plain and ordinary meaning. *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008); see also MCL 8.3a. A dictionary may be consulted as the tool to ascertain the term’s plain and ordinary meaning. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002).

It is undisputed—“public official” is not a defined term within the *Open Meetings Act*. Thus, the Legislature and this Court have required the term ‘public official’ be given its plain and ordinary meaning. Black’s Law Dictionary directs its readers searching for a

definition of “public official” to look to the first definition of “official.” BLACK’S LAW DICTIONARY, 8TH ED., p. 1267. An “official,” in turn, is defined as “[o]ne who holds or is invested with a public office; a person elected or appointed to carry out some portion of a government’s sovereign powers.” *Id.*, p. 1119; see also BLACK’S LAW DICTIONARY, 10TH ED., p. 1259 (same).¹ The same goes for Barron’s Law Dictionary. See BARRON’S LAW DICTIONARY, 5TH ED., p. 409.² This commonly understood definition in no way requires the added qualification, as the lower courts self-imposed, of being a ‘member of’ a public body or a voting³ member of a public body. The dictionary definitions—i.e. the plain and ordinary definitions—are the proper meaning the Court should apply consistent with interpretation rules mandated by MCL 8.3a and *Brackett*.

In applying the proper definition in this case, it is undisputed that Village Clerk Cheryl Bolf holds or is invested with a public office as the duly-elected clerk of the Village of Oakley. She has admitted the same by her answer. Answer, ¶6 (“On November 6, 2012, Defendant BOLF was re-elected as Clerk of the Village of Oakley.”). Moreover, Cheryl Bolf has also admitted, by her answer, that she “is the public official responsible for the creation and maintenance of these [disputed] minutes as well as proceedings and resolutions of the council.” Answer, ¶12 (emphasis added). Thus, Cheryl Bolf is a ‘public official’ as intended by the Legislature pursuant MCL 15.273(1).

¹ “Someone who holds or is invested with public office; a person elected or appointed to carry out some portion of a government’s sovereign powers. – Also termed *public official*.” (emphasis in original)

² Public official: “any elected or appointed person holding a public office and having duties relating to the sovereign powers of government.”

³ Appellant denotes “voting” because the lower courts were aware that an elected village clerk is, statutorily, “*clerk of the council* and shall attend its meetings.” MCL 64.5(1)(emphasis added). As such, she is part of the public body. The only possible distinction is that an elected clerk lacks a legislative vote in a general law village.

CONCLUSION

As this Court has explained, “the proper exercise of the judicial power is to determine from objective legal sources what public policy *is*, and not to simply assert what such policy *ought* to be on the basis of the subjective views of individual judges.” *Terrien v Zwit*, 467 Mich 56, 66; 648 NW2d 602 (2002). Here, the Legislature has required that all those *who are commonly understood* to be “public officials” must not intentionally violate the *Open Meetings Act* else suffer a proscribed penalty for their public malfeasance. Cheryl Bolf committed such an unlawful act and, as a public official, is to be held responsible as a consequence of her illegal actions.⁴ Section 13 is clearly designed to serve as a legal deterrent to those who would use their positions of public trust to aid in the concealment of graft contracts and non-transparent decision-making. The lower courts committed error in applying an *unordinary* definition to ‘public official’ and must be overruled.

RELIEF REQUESTED

For the reasons cited herein, Appellant Shannon Bitterman respectfully requests this Court, pursuant to MCR 7.305(H), to preemptory reverse the Court of Appeals’ decision that a duly-elected clerk is not a public official and instead conclude Bolf, as the individual elected to the public position of village clerk, is a public official under MCL 15.273(1), together with direction to remand to the Circuit Court for further consideration.

⁴ Despite her false spin otherwise, Cheryl Bolf’s actions were not a ‘good faith’ mistake, but are instead a carefully choreographed attempt to hide illegal contracts made with voted-out trustees—her political allies—to permit the latter to continue to feed off the public coffers.

In the alternative, this Court is requested to grant leave pursuant to MCR 7.305(H) on the issue of “who is a public official.”

RESPECTFULLY SUBMITTED:

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